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July 23, 2004

The Honorable David M. Walker
Comptroller General of the United States
U.S. Government Accountability Office
441 G. Street NW
Washington, DC 20548

Dear Mr. Walker:

To ensure the safety of the American public during these times of potential danger from terrorism, it is imperative that explosives are safeguarded so that they do not fall into the wrong hands. The theft over the July 4, 2004 weekend of approximately 200 pounds of explosives and bomb making hardware from a California storage locker used by public safety agencies raises serious concerns about the level of security at such facilities.

The Subcommittee is concerned about the vulnerability of explosive storage facilities to terrorist attacks and whether action is being taken to address facility vulnerabilities and risks in a systematic and comprehensive manner. Such a risk management approach is needed to ensure that the security measures implemented are appropriate and cost effective.


The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for enforcement of federal laws related to storage of explosives in private facilities, but the states, not the federal government, have the authority to enforce protection standards in public facilities. It is estimated there are hundreds of these facilities throughout the United States. Based on our concerns regarding the safety and

security of these explosive storage facilities, we are requesting that GAO undertake a study to address the following questions:

1. Does the Department of Justice have an inventory of public and private explosive storage facilities?
2. What quantities of explosives are being stored in them?
3. What types of explosives are stored?
4. Are all of the public storage facilities necessary?
5. What is ATF's mission in relation to safeguard and security of explosives in public facilities and what resources are devoted to this effort?
6. What enforcement mechanisms are available to them, when have they been used and to what effect?
7. What are states doing to ensure safe storage of explosives in public facilities?
8. What enforcement mechanisms are available to them, when have they been used and to what effect?

Because of our public safety concerns, we are requesting that work on this project be initiated as soon as possible. If you have any questions, please contact Mr. Lawrence Halloran, Staff Director or Mr. Vincent Chase, Chief Investigator. Mr. Halloran and Mr. Chase can be reached at 225-2548. Thank you for your assistance.

Sincerely,


Christopher Shays
Chairman

Sincerely,


Tom Lantos

cc: The Honorable Tom Davis
The Honorable Henry Waxman
The Honorable Dennis J. Kucinich
The Honorable Michael R. Turner

Attachment 2

October 2005

ATF

Thefts of Explosives
from State and Local
Government Storage
Facilities Are Few but
May Be
Underreported



G A O

Accountability * Integrity * Reliability

GAO
Accountability • Integrity • Reliability

Highlights

Highlights of GAO-06-92, a report to congressional requesters

Why GAO Did This Study

More than 5.5 billion pounds of explosives are used each year in the United States by private sector companies and government entities. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has authority to regulate explosives and to license privately owned explosives storage facilities. After the July 2004 theft of several hundred pounds of explosives from a state and local government storage facility, concerns arose about vulnerability to theft.

GAO analyzed (1) the extent of explosives thefts from state and local government facilities, (2) ATF's authority to regulate and oversee state and local government explosives storage facilities, (3) the information ATF collects about state and local government storage facilities, and (4) security oversight measures in place at selected state and local government storage facilities.

What GAO Recommends

GAO recommends that the Attorney General direct the ATF Director to clarify explosives incident reporting regulations to ensure that all entities storing explosives, including state and local government agencies, understand their obligation to report all thefts or missing explosives. The Department of Justice agreed with GAO's recommendation and indicated it would take steps to implement it.

www.gao.gov/cgi-bin/getrpt?GAO-06-92.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Laurie Ekstrand at (202) 512-8777 or ekstrandl@gao.gov.

ATF

Thefts of Explosives from State and Local Government Storage Facilities Are Few but May Be Underreported

What GAO Found

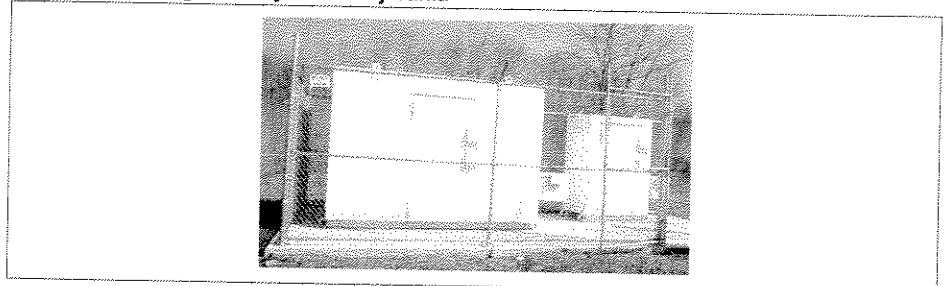
Judging from available ATF data, there have been few thefts of explosives from state and local government storage facilities. From January 2002 to February 2005, ATF received only 9 reports of thefts or missing explosives from state and local facilities, compared with a total of 205 explosives thefts reported nationwide during this same period. During the course of our audit, we found evidence of 5 thefts from state and local government facilities, 1 of which did not appear in ATF's national database on thefts and missing explosives. Thus, the actual number of thefts occurring at state and local storage facilities could be higher than that identified by ATF data.

ATF has no authority to oversee or inspect all state and local government explosives storage facilities. State and local government agencies are not required to obtain a license from ATF to use and store explosives, and only licensees—such as private sector explosives storage facilities—are subject to mandatory oversight. As a result, ATF has no means to ensure that state and local government facilities are in compliance with federal regulations.

While ATF does not collect nationwide information about state and local government explosives storage facilities, information about some of these facilities is collected—for example, when facility operators voluntarily request an ATF inspection. Since January 2002, ATF has conducted 77 voluntary inspections at state and local storage facilities and found no systemic violations. By comparison, all licensed private sector facilities must submit a variety of information about their facility—including location and security measures in place—to ATF during the licensing process. ATF also collects information about these facilities during mandatory inspections.

At the 18 state and local government storage facilities we visited, a variety of security measures were in place, including locked gates, fencing, patrols, and in some cases, electronic surveillance. All the facilities' officials told GAO that they conducted routine inventories. But most were not required to be licensed or inspected by state or local regulatory agencies. We identified several instances of possible noncompliance with federal regulations, related primarily to storage safety issues rather than security.

Explosives Storage Facility in Pennsylvania



Source: GAO.

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Abbreviations

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
OIG	Office of the Inspector General

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United States Government Accountability Office
Washington, DC 20548

October 3, 2005

The Honorable Christopher Shays
Chairman, Subcommittee on National Security,
Emerging Threats, and International Relations
Committee on Government Reform
House of Representatives

The Honorable Tom Lantos
House of Representatives

More than 5.5 billion pounds of explosives are used each year in the United States. These explosives are used by both public sector entities (such as state and local government agencies) and private sector companies for a variety of purposes—including mining, construction, avalanche control, and law enforcement.¹ Under current federal explosives laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for licensing and regulating explosives manufacturers, importers, dealers, and users. ATF's authority to regulate explosives stems originally from the Organized Crime Control Act of 1970 and was expanded further by enactment of the Safe Explosives Act in 2002.² It is primarily through its licensing authority that ATF oversees and inspects privately owned explosives facilities to ensure they comply with explosives storage laws and regulations. With regard to government-owned explosives storage facilities, state and local agencies are also subject to federal explosives storage laws and regulations, but exempt from the ATF licensing requirements.³

In July 2004, several hundred pounds of explosives were stolen from law enforcement storage magazines at a city/county storage facility in

¹ Law enforcement bomb squads, for example, may store explosives for a number of uses—including destroying recovered explosives, dismantling explosive devices, and holding explosive materials for evidence.

² Specifically, Title XI of Public Law 91-452, 84 Stat. 922, 952 (1970); and Subtitle C of Title XI of Public Law 107-296, 116 Stat. 2135, 2280 (2002), respectively.

³ An approved storage facility is defined as a place where explosive materials are stored, consisting of one or more approved storage magazines. A storage magazine is defined as any building or structure, other than an explosives manufacturing building, used for storage of explosive materials.

California. The thieves were subsequently arrested and the explosives were recovered. Out of concern that state and local government explosives storage facilities could be vulnerable to theft, you asked us to provide information regarding the security oversight of these facilities. For this report, we focused on the following questions:

1. What is the extent of explosives thefts from state and local government facilities and how does this compare with the total number of explosives thefts reported nationwide?
2. What authority does ATF have to regulate and oversee state and local government explosives storage facilities and how does this compare with its authority over private sector storage facilities?
3. What information does ATF collect regarding the locations and types and amounts of explosives stored at state and local government explosives storage facilities and how does this compare with information collected about private sector storage facilities?
4. What security oversight measures are in place at selected state and local government storage facilities to ensure the safe and secure storage of explosives?

To address these questions, we obtained information from U.S. government agencies, law enforcement associations, industry groups, and other experts on explosives. More specifically, to obtain the perspectives of U.S. government agencies on their efforts to regulate and oversee state and local government explosives storage facilities, and to obtain information on the numbers of explosives thefts and law enforcement bomb squads, we contacted officials from the Department of Justice (DOJ), ATF, and the Federal Bureau of Investigation (FBI). To obtain other public sector and private sector perspectives on the security oversight of explosives storage facilities, we contacted associations representing state and local law enforcement agencies and the explosives industry. To determine what selected states and localities are doing to provide oversight of explosives storage in state and local government sector facilities, we met with officials at 14 state and local government entities (13 law enforcement bomb squads and one public university) in four states—Colorado, Pennsylvania, Tennessee, and Texas—and observed their explosives storage facilities. We selected these four states to obtain a geographic spread (west, northeast, southeast, and southwest) across the country, based on (1) the number of explosives licensees and

reported explosives thefts, (2) the number of law enforcement bomb squads, and (3) the location of universities with mining programs.⁴ Our criteria for identifying the type of security oversight measures in place included existing federal explosives storage laws and regulations and security guidelines issued by the explosives industry. Because we selected and visited a limited nonprobability sample of 14 state and local entities in the four states, the information discussed in this report cannot be generalized to all state and local government agencies that store explosives. Additional detail on our scope and methodology is provided in appendix I.

We conducted our work from February through August 2005 in accordance with generally accepted government auditing standards.

Results in Brief

Judging from available ATF data, there have been few thefts of explosives from state and local government storage facilities. However, reports of thefts could be understated by an unknown amount. During the 3-year period from January 2002 to February 2005, ATF received only 9 reports of thefts or missing explosives from state and local government storage facilities. By comparison, during this same time period there were a total of 205 explosives thefts reported from all sources nationwide. There are two federal reporting requirements relating to the theft of explosives—one is specific to explosives licensees (and permittees) and the other generally applies to “any person who has knowledge of the theft or loss of any explosive materials from his stock.” While ATF has interpreted this second reporting requirement as applying to nonlicensed state and local government explosives storage facilities, ATF officials acknowledged that state and local government entities may be unclear as to whether they are covered under this requirement. Indeed, this lack of clarity issue may have contributed to our findings: During our audit, we found evidence of five thefts from state and local government facilities, one of which did not appear in ATF’s national database on thefts and missing explosives. Because of this, the total number of thefts occurring at state and local government storage facilities could actually be more than the number identified by ATF data.

⁴ We are not disclosing the names or other identifying information relating to the individual state and local entities we visited to ensure that security-related information is not unintentionally disclosed.

Although federal storage requirements are applicable to state and local government explosives storage facilities, ATF does not have oversight authority with respect to these facilities. With respect to private sector facilities, ATF oversight—including the ability to conduct regulatory inspections—is linked to the licensing of facilities. Private sector businesses and organizations that import, manufacture, or deal in explosives are required to obtain a federal license. As a requirement of the licensing process, private sector licensees are generally subject to mandatory ATF oversight inspections of their explosives storage facilities. State and local government agencies that use and store explosives are not required under federal explosives law to obtain a license from ATF. In addition, ATF does not have specific statutory authority to conduct regulatory inspections at state and local explosives storage facilities. State and local government storage facilities are generally not inspected by ATF, unless the facility operator voluntarily requests such an inspection or shares its storage magazine with ATF. As a result, ATF has no means to ensure that all state and local government facilities nationwide are in compliance with federal storage regulations.

ATF does not collect nationwide information on the number and location of state and local government storage facilities or the types and amounts of explosives that are being stored in these facilities. State and local government agencies are exempt from obtaining a federal explosives license, and they are not subject to ATF oversight authority. As a result, ATF has no real way of knowing the precise number of these facilities or the extent to which their explosives storage facilities are secure from theft. For a limited number of state and local government facilities—those that request a voluntary inspection or where ATF shares a state and local magazine—ATF conducts inspections that allow it to collect information about such things as the location and characteristics of these storage facilities. However, because ATF does not have authority to conduct mandatory inspections of all state and local government entities, ATF has no means to collect this type of information nationwide. Although ATF cannot gather information about state and local government entities, it is able to collect a variety of information about private sector explosives licensees, who operate roughly 7,500 storage facilities and nearly 23,000 permanent or mobile storage magazines in the United States. Information about these storage facilities and the explosives being stored is required to be submitted to ATF during the licensing application process. Additional information is collected during the course of mandatory ATF inspections of licensees. During our audit, we identified various types of state and local government agencies that use and store explosives—including law enforcement bomb squads, public universities, and departments of

transportation. However, we did not gather sufficient information about these entities to reliably estimate the total number of state and local government storage facilities and magazines nationwide.

At the 14 state and local entities we visited, we observed a variety of security measures in place at their 18 storage facilities. Regarding physical security, most storage facilities had some kind of locked gate to prevent vehicle access, and several had fencing surrounding their storage facilities or storage magazines. At each of these facilities, officials told us they visually inspected or patrolled the facility on a regular basis. Four storage facilities also had electronic security systems in place—either monitored alarms or video surveillance—although one of these was out of service at the time of our visit. Officials at several other entities said they were actively planning to implement some form of electronic security or were in the process of installing a security system in the near future at their storage facilities. These types of security measures—fences, vehicle barriers and electronic monitoring devices—all exceed the requirements of federal explosives regulations. Regarding oversight activities, officials at all the entities we visited told us they conducted routine inventories of their storage facilities. Most facilities were not required to be licensed or inspected by state or local regulatory agencies, although several officials said they had previously had their storage facilities inspected by ATF. Two of the 14 entities we visited had previously reported a loss or experienced a theft of explosives, but only one of these incidents appeared in ATF's nationwide theft database.

To allow ATF to better monitor and respond to incidents of missing or stolen explosives, we are recommending that the Attorney General direct the ATF Director to clarify the explosives incident reporting regulations to ensure that all persons and entities who store explosives, including state and local government agencies, understand their obligation to report all thefts or missing explosives to ATF within 24 hours of an occurrence.

We provided a draft of this report to DOJ for its review and comment. DOJ agreed with our recommendation and also provided technical comments, which we have incorporated into the report, as appropriate.

Background

ATF is the chief enforcer of explosives laws and regulations in the United States and is responsible for licensing and regulating explosives manufacturers, importers, dealers, and users.⁵ ATF is also responsible for regulating most, but not all, explosives storage facilities. ATF's regulatory authority over explosives stems from the Organized Crime Control Act of 1970.⁶ This statute imposed controls over the importation, manufacture, distribution, and storage of explosives, and was the basis for giving ATF enforcement responsibilities for these controls.⁷ The Safe Explosives Act expanded ATF's authority to generally require licenses for persons who purchase or receive explosives and background checks on licensees and their employees who handle explosives.⁸

Under federal explosives regulations, a license is required for persons who manufacture, import, or deal in explosives and, with some exceptions, for persons who intend to acquire explosives for use. No license is required solely to operate an explosives storage facility. However, all persons who store explosive materials (including state and local agencies) must conform with applicable ATF storage regulations, irrespective of whether they are required to obtain an explosives license for other purposes. State and local agencies are not required to obtain an explosives license to use and store explosives. Similarly, federal government agencies, the U.S. military, and other federally owned or operated establishments are exempt from compliance with both the licensing and the storage regulations. According to ATF data, as of February 2005 there were 12,028 federal explosives licensees in the United States.⁹ Roughly 7,500 of these had some kind of explosives storage facility, consisting of 22,791 permanent or mobile storage magazines.

⁵ Licenses are issued to persons who manufacture, import, or sell explosives, while permits are issued to persons who intend to acquire and use explosives. Throughout the remainder of this report, references to explosives licenses, licensees, or ATF's licensing authority refer to both explosives licenses and permits.

⁶ Pub. L. No. 91-452, Title XI, 84 Stat. 922, 952 (1970). The explosives regulatory functions of ATF are found at 27 C.F.R. Part 555.

⁷ Pursuant to the Homeland Security Act of 2002 (Pub. L. No. 107-296, 116 Stat. 2135, 2280), ATF's existing enforcement responsibilities, including its authority over explosives, were transferred from the Treasury Department to the new Bureau of Alcohol, Tobacco, Firearms and Explosives, within the Justice Department. All ATF regulations issued prior to that time remained in effect.

⁸ Subtitle C of Title XI of the Homeland Security Act of 2002.

⁹ Including licensees in the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ATF storage regulations include requirements relating to the safety and security of explosives storage magazines—that is, any building or structure (other than an explosives manufacturing building) used for storage of explosive materials. Regarding safety, the storage regulations include requirements related to location, construction, capacity, housekeeping, interior lighting, and magazine repairs, as well as a requirement that the local fire safety authority be notified of the location of each storage magazine. Regarding security, the ATF storage regulations include the following requirements:

- *Explosives handling.* All explosive materials¹⁰ must be kept in locked magazines unless they are in the process of manufacture, being physically handled in the operating process of a licensee or user, being used, or being transported to a place of storage or use. Explosives are not to be left unattended when in portable storage magazines.
- *Magazine construction.* Storage magazines must be theft-resistant and must meet specific requirements dealing with such things as mobility, exterior construction, door hinges and hasps, and locks.
- *Magazine inspection.* Storage magazines must be inspected at least every 7 days. This inspection need not be an inventory, but it must be sufficient to determine if there has been an unauthorized entry or attempted entry into the magazines, or unauthorized removal of the magazine contents.
- *Magazine inventory.* Within the magazine, containers of explosive materials are to be stored so that marks are visible. Stocks of explosive materials are to be stored so they can be easily counted and checked.

Notwithstanding the security requirements described above, ATF storage regulations do not require explosives storage facilities to have any of the following physical security features—fences, restricted property access, exterior lighting, alarm systems, or electronic surveillance. Also, while ATF licensing regulations require explosives licensees to conduct a physical inventory at least annually, there is no similar inventory requirement in the storage regulations applicable to other persons who store explosives.

¹⁰ As defined in the federal explosives law and regulations at 18 U.S.C. § 841 and 27 C.F.R. § 555.11.

Limited Data Indicate That Few Thefts May Have Occurred at State and Local Government Storage Facilities, but the Exact Number Is Uncertain

According to ATF data, the number of reported state and local government thefts is relatively small when compared with the total number of thefts that have occurred nationwide. For example, during a recent 3-year period (January 2002—February 2005), 9 thefts involving state and local government storage facilities were reported. Of these, 5 involved state and local law enforcement agencies (1 was later determined to be the possible result of training explosives that had been mistakenly discarded), 3 others involved state government entities (all universities), and the remaining incident took place at a county highway department. Two of the 9 incidents occurred in California (including last year's theft that was mentioned previously), and no other state reported more than one incident. By comparison, during this same period, ATF received reports of 205 explosives thefts nationwide from all sources. Three states—California, Texas, and Pennsylvania—accounted for about one-quarter (53) of the total reported thefts nationwide. According to ATF officials, this may be due to the larger numbers of explosives licensees and storage magazines located in these three states.

The amounts of explosives reported stolen or missing from state and local government facilities in each reported incident of theft are also relatively small when compared with the total amounts of stolen and missing explosives nationwide. For example, during a recent *10-month period* for which data were available (March 2003 through December 2003), there were a total of 76 theft incidents nationwide reported to ATF, amounting to a loss of about 3,600 pounds of high explosives, 3,100 pounds of blasting agents, 1,400 detonators, and 2,400 feet of detonating cord and safety fuse. By comparison, over an entire *10-year period* (January 1995—December 2004), ATF received only 14 reports of theft from state and local law enforcement storage magazines. In 10 of these incidents, less than 50 pounds of explosives was reported stolen or missing; while in 3 of the incidents, more than 50 pounds was stolen or missing.¹¹ In 6 of these 14 cases, ATF data indicate that most or all of the explosives were recovered; in the other 8 cases, none of the explosives have been recovered.

While the ATF theft data indicate that thefts from state and local facilities make up only a small part of the overall thefts nationwide, these reports may be understated by an unknown amount. There are two federal reporting requirements relating to the theft of explosives. One is specific

¹¹ For the remaining incident, no details were available on the quantity of explosives involved.

to all federal explosives licensees (and permittees) and requires any licensee to report any theft or loss of explosives to ATF within 24 hours of discovery. The second reporting requirement generally requires any other “person” who has knowledge of the theft or loss of any explosive materials from his stock to report to ATF within 24 hours. Although the term “person” as defined in law and regulation does not specifically include state and local government agencies,¹² ATF has historically interpreted this requirement as applying to nonlicensed state and local government explosives storage facilities. With respect to the second reporting requirement, according to ATF, the legislative history of the Organized Crime Control Act of 1970 indicates that Congress believed visibility over *all* incidents [emphasis added] of stolen explosives was necessary to effectively enforce any federal explosives regulatory statute—primarily because of the special problems presented by stolen explosive materials and the persons possessing them.

While ATF has interpreted the theft reporting requirement as applying to state and local government explosives storage facilities, ATF officials acknowledged that state and local government entities could be unsure as to their coverage under the theft reporting requirements. As a result, some state and local government entities may not know they are required to report such incidents to ATF, and this lack of information could impair ATF’s ability to monitor these incidents and take appropriate investigative action. Indeed, during our site visits and other state and local contacts, we identified five state and local government entities that had previously experienced an incident of theft or reported missing explosives—two involving local law enforcement agencies, two involving state universities, and one involving a state department of transportation.¹³ However, one of these five incidents did not appear in ATF’s nationwide database of reported thefts and missing explosives. Based on these findings, the actual number of thefts occurring at state and local government storage facilities nationwide could be more than the number identified by ATF data.

¹² The term “person” is defined in statute and regulation as “any individual, corporation, company, association, firm, partnership, society, or joint stock company” (see 18 U.S.C. § 841(a); and 27 C.F.R. § 555.11).

¹³ Two of these five incidents occurred at locations we visited; three occurred at other locations we identified during the course of our audit work.

ATF Authority to Oversee State and Local Government Explosives Storage Facilities Is Limited, as Is ATF's Capacity to Absorb Additional Oversight Responsibilities

With certain exceptions (such as for federal agencies), federal explosives law requires all persons who store explosives to conform to applicable regulations. However, there is no ATF oversight mechanism in place to ensure that state and local government facilities have complied with the regulations. With respect to private sector entities, ATF's authority to oversee explosives storage facilities is primarily a function of its licensing process. However, the licensing requirements described in the law and regulations above do not apply to the transportation, shipment, receipt, or importation of explosive materials to any state or its political subdivision (such as a city or county). That is, government entities, such as state and local law enforcement agencies, are not required to obtain a federal license to use and store explosives. In addition, ATF does not have specific statutory authority to conduct regulatory inspections at state and local explosives storage facilities. As a result, these facilities are not subject to mandatory oversight under ATF's licensing authority or any ATF regulatory inspection authority apart from the licensing process.

ATF may inspect state and local government storage facilities under certain circumstances—for example, if the operator of the facility voluntarily requests ATF to conduct an inspection. Since January 2002, ATF has conducted 77 voluntary inspections at state and local storage facilities—34 inspections at facilities that ATF shares with state and local agencies and 43 inspections at other state and local facilities.¹⁴ These inspections basically involve checking for compliance with federal storage regulations, including verifying proper construction of the storage magazine and verifying that the amount of explosives stored is consistent with the approved table of distances.¹⁵ In addition to conducting voluntary inspections, ATF also conducts inspections of state and local explosives storage magazines that are shared by ATF and a state or local agency. ATF currently shares space in 52 storage magazines, including 33 that are owned or leased by state and local agencies. Shared magazines are subject to mandatory inspections by ATF, and the inspection procedures are basically the same as those described above for voluntary inspections. According to ATF officials, no significant or systemic safety or security problems have been found during inspections of state and local storage

¹⁴ As discussed later in this report, the total number of state and local government storage facilities nationwide is currently unknown.

¹⁵ As published in the federal storage regulations, the table of distances lists the minimum acceptable distances separating explosives magazines from inhabited buildings, passenger railroads, public highways, and other explosives magazines.

magazines. However, regarding those state and local government facilities that ATF does not inspect, ATF officials acknowledged they had no way of knowing the extent to which these facilities are complying with federal storage regulations.

By comparison with state and local government entities, private sector licensees are subject to mandatory ATF oversight and inspection. Under provisions of the Safe Explosives Act, ATF is generally required to physically inspect a license applicant's storage facility prior to issuing a federal explosives license—which effectively means at least one inspection every 3 years. This inspection is intended to verify that the applicant's storage facility complies with federal regulations regarding safety and security, and the inspection requirement applies to original license applications, as well as renewals (with certain exceptions).¹⁶ In addition, the regulations allow ATF to inspect licensees at any time during business hours, for the purpose of inspecting or examining any records or documents required to be maintained and any explosive materials kept or stored at the premises.

ATF officials stated that if the agency were to be required to conduct mandatory inspections of state and local government storage facilities, they would likely need additional resources to conduct these inspections because they are already challenged to keep up with inspections that are mandated as part of the explosives licensing requirements. One factor that affects ATF's ability to meet inspection goals is that inspectors have to conduct inspections of licensed firearms dealers, manufacturers, and importers, as well as explosives licensees. As noted above, ATF must physically inspect explosives licensees at least once every 3 years—or about one-third (4,000) of the roughly 12,000 licensees each year. According to ATF officials, because license applications and renewals are not evenly distributed over this 3-year cycle, some years there may actually be more or less than 4,000 inspections per year. ATF currently has 723 field inspectors, 620 of whom regularly conduct explosives and firearms inspections (the others are in supervisory or administrative positions). About 20 percent of the inspection time is spent on explosives inspections; the remainder is spent on firearms.

¹⁶ An exception is made for "limited" licenses which are good for 1 year and allow a limited number of explosives purchases. For new applicants (and up to two renewals), ATF may verify the safety and security of the applicant's storage facility by means other than an inspection.

In July 2004, DOJ's Office of the Inspector General (OIG) reported that ATF's inspections program was being affected by staffing shortages. The OIG noted that in response to passage of the Safe Explosives Act, ATF had to divert resources from firearms inspections to conduct explosives inspections required under the act. The OIG report further stated that ATF had calculated (and reported to Congress) that it needed almost 1,800 inspectors—including 540 just for explosives inspections—to manage its existing inspection workload at that time.¹⁷ To help ATF carry out its explosives responsibilities, the conferees on the DOJ appropriations act for fiscal year 2005 directed funding increases in fiscal year 2005 for the hiring of an additional 31 explosives inspectors, for purposes of explosives investigations and regulatory compliance.¹⁸ In addition, the House Committee on Appropriations has recommended additional funding in ATF's fiscal year 2006 appropriation, for the hiring of another 50 explosives inspectors.¹⁹ Despite these increases, giving ATF additional responsibility to oversee state and local government storage facilities could further tax the agency's inspection resources. According to ATF officials, because of the legislative mandate to physically inspect explosives licensees, the effect of additional state and local government explosives responsibilities (without similar increases in inspector resources) could be to reduce the number of firearms inspections that ATF could conduct.

¹⁷ The OIG disputed these figures, but still estimated ATF needed about 800 inspectors just for firearms inspections. This is more than the total number of firearms *and* explosives inspectors that are currently on board.

¹⁸ H. R. Conf. Rep. No. 108-792, at 733 (2004).

¹⁹ H. R. Rep. No. 109-118, at 34 (2005).

ATF Does Not Collect Nationwide Information about State and Local Government Storage Facilities, but Does So for Licensed Private Sector Facilities

According to ATF officials, ATF does not collect nationwide information on the number and location of state and local government explosives storage facilities, nor does the agency know the types and amounts of explosives being stored in these facilities. With respect to private sector licensees, ATF collects descriptive information concerning explosive storage facilities as part of the licensing process. However, state and local government explosive storage facilities are not required to obtain a license from ATF, and ATF does not have specific statutory authority to conduct regulatory inspections of such facilities. As a result, no systematic information about these facilities is collected. For those state and local government facilities that ATF does inspect—either voluntary inspections of state and local magazines or mandatory inspections of shared magazines—some information is collected by ATF. During these inspections, ATF collects information about the location of the storage magazines, the types and amounts of explosives stored, and whether the magazines are in compliance with federal storage regulations. According to ATF officials, the information obtained from these inspections—along with the results from inspections of licensees—are maintained in ATF's N-Spect nationwide inspection database. While mandatory annual inspections are required by ATF at each of the 33 state and local magazines where ATF shares storage space, there have been only 77 voluntary inspections of state and local storage magazines since January 2002. ATF also has some ability to monitor state and local storage facilities at locations where ATF maintains its own storage magazine. ATF headquarters and field offices currently have 118 storage magazines colocated at facilities with state and local storage magazines. For these facilities, ATF collects information about the location of the facility and the inspection status of any state and local magazines on site.²⁰ Of the 77 voluntary inspections discussed above, 34 were at these colocated facilities.

By comparison, ATF collects a variety of information about private sector explosives storage facilities, primarily under its authority to issue explosives licenses. For example, ATF license application forms require applicants for an explosives license to submit information about their storage capabilities. Specific information applicants are required to submit to ATF includes the type of storage magazine, the location of the magazine, the type of security in place, the capacity of the magazine, and the class of explosives that will be stored. ATF also collects information

²⁰ Such as whether the state and local magazines have been voluntarily inspected by ATF.

about private sector storage facilities during mandatory licensee inspections. As noted previously, prior to issuing or renewing an explosives license, ATF must generally verify by on-site inspection that the applicant has a storage facility that meets the standards of public safety and security against theft as prescribed in the regulations. Thereafter, ATF may also inspect a licensee at any time during business hours—including inspection of storage magazines, examination of explosives inventory and sales records, and verification of compliance with ATF administrative rules. Because state and local government storage facilities are exempt from the licensing process described above, they are not required to submit licensing-related information about their storage facility to ATF and they are not subject to licensing-related mandatory ATF inspections. In addition, ATF does not have specific statutory authority to perform regulatory oversight inspections of such facilities apart from the licensing process. As a result, ATF is unable to collect complete nationwide information about where these facilities are or the types and amount of explosives they store.

During the course of our audit work, we compiled data on state and local law enforcement bomb squads that would be likely to use and store explosives. At the 13 state and local law enforcement bomb squads we visited, we identified 16 storage facilities and 30 storage magazines. At these locations, the number of storage facilities ranged from 1 to 2, and the number of storage magazines ranged from 1 to 4. According to FBI data, there are currently 452 state and local law enforcement bomb squads nationwide. The total number of state and local government storage facilities and magazines nationwide, however, encompasses other entities in addition to law enforcement bomb squads—including other law enforcement agencies, public universities, and departments of transportation. The precise number of storage facilities and magazines at these locations is currently unknown. And because of the limited nature of our fieldwork, we cannot generalize about the extent of security and oversight these entities may have at their own explosives storage facilities.

Security Measures Varied at State and Local Explosives Storage Facilities We Visited

We found that security oversight measures varied at the 14 selected state and local government entities we visited. These 14 entities maintained a total of 18 storage facilities. With regard to physical security, 13 of the 18 storage facilities restricted vehicle access to the storage area. Six of the 18 storage facilities also had a barrier immediately surrounding the storage containers preventing human access. Official personnel at all 18 facilities said they patrolled or inspected the storage facility on a regular basis. Regarding electronic security, 4 of the 18 facilities had either an alarm or

video monitoring system in place. Inventory and other oversight activities at all 14 of the state and local entities included regular, periodic inventories of the contents of their explosives storage facilities. In addition, a federal, state, or local government authority had performed inspections for 9 of the 14 entities. State government agencies in Colorado and Pennsylvania required 5 state and local entities we visited in these states to obtain licenses to operate their explosives storage facilities. However, 2 of these 5 entities did not have the required licenses in place at the time of our visit. Two of the 14 entities had experienced prior thefts or losses from their storage facilities, and we observed storage practices at four facilities that may not be in compliance with federal regulations.

The following sections describe our observations of the explosives storage magazines and types of security measures in place at the 18 state and local storage facilities we visited. Our criteria for identifying the type of security measures in place included existing federal explosives storage laws and regulations (27 C.F.R., Part 555, Subpart K) and security guidelines issued by the explosives industry (the Institute of Makers of Explosives). Most of these security measures are not currently required under federal storage regulations (perimeter fencing, for example). However, we are presenting this information in order to demonstrate the wide range of security measures actually in place at the time of our visits.

Explosives Storage Facilities Varied with Regard to Users and Size

As shown in table 1, the 14 state and local government entities we visited included 11 city or county bomb squads (including police departments and sheriffs' offices), 2 state bomb squads, and one public university. Four of the 14 state and local entities had two separate storage areas encompassing a total of 18 explosives storage facilities among the 14 entities. As further shown in table 1, 17 of these explosives storage facilities were located on state, city, county, or police property. These included 3 that were located on state property (such as state law enforcement or state university), 7 that were located at police training facilities, and 7 that were located on city or county government-owned property (such as correctional or water facilities). For example, one local entity we visited in Texas had a storage facility located on the grounds of a city-owned nature preserve.

Table 1: Overview of the State and Local Entities We Visited

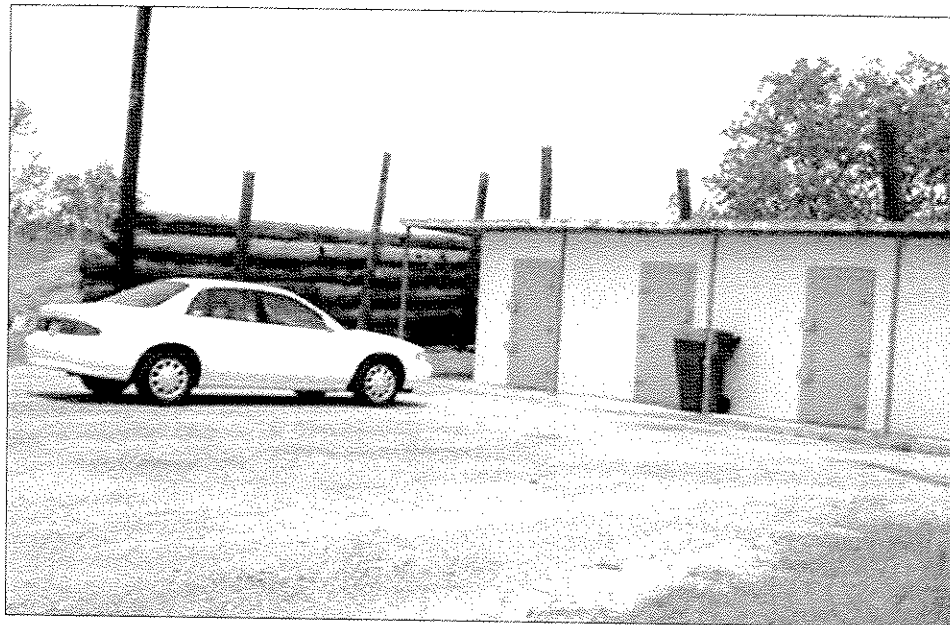
	Number	Examples
State and local entities	14	
Agency type		
• State bomb squad	2	State police and highway patrol
• City/county bomb squad	11	Police departments and sheriffs' offices
• Public university	1	School with mining engineering curriculum
Storage facility locations	18	
Property type		
• Police training	7	Academy or other training facility
• State	3	University, state law enforcement
• City/county	7	Correctional facility, water treatment, nature park
• Airport	1	Airport grounds
Storage magazines	34	
Magazine types		
• Type 1 (permanent)	10	7 aboveground, 3 underground
• Type 2 (mobile)	22	19 box-type, 3 trailer-type
• Type 3 (temporary)	2	2 day-boxes used for permanent storage

Source: GAO observation, comments by state and local government officials, and ATF regulations.

Also, 11 of the 18 explosives storage facilities we visited contained multiple magazines for the storage of explosives. As a result, the 18 facilities housed a total of 34 magazines divided into various types as shown in table 1.²¹ A Pennsylvania storage facility had 4 magazines, which was the largest number among the facilities we visited. Figures 1 through 3 depict different types of explosives storage magazines.

²¹ Title 27, section 555.203, of the Code of Federal Regulations defines magazine types.

Figure 1: Type 1 (Permanent Structure) Explosives Storage Magazines in Texas and Colorado



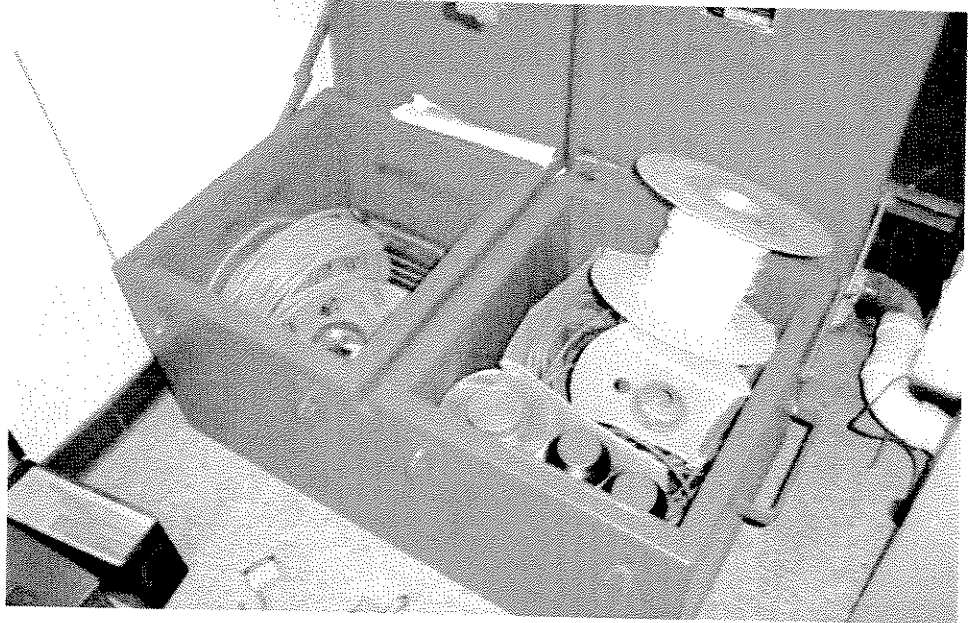
Source: GAO.

Figure 2: Type 2 (Mobile) Explosives Storage Magazines in Pennsylvania and Tennessee



Source: GAO.

Figure 3: Type 3 (Portable Day-Box) Explosives Storage Magazine in Pennsylvania



Source: GAO.

All of the 18 facilities contained a variety of high explosives, including C-4 plastic explosive, TNT, binary explosives, and detonators. Officials from 13 of the state and local entities provided us with estimates of the quantities of explosives they were storing, and they reported amounts ranging from 10 to 1,000 pounds, with the majority of the entities (9) indicating they had 200 pounds or less.

Different Types of Physical Security Measures at Explosives Storage Facilities

At the 18 storage facilities we visited, we looked for the presence of exterior and interior fencing, other barriers to restrict vehicle or pedestrian access, and security personnel. Federal explosives storage regulations do not require any of these physical security attributes; rather, the regulations generally require theft-resistant magazine construction (including locks) and weekly inspections of magazines. As shown in table 2, 13 of the 18 storage facilities restricted vehicle access to the facility grounds by way of a locked security gate or by virtue of being an indoor facility. Five of the 13 facilities restricted vehicle access after normal working hours (nights or nights and weekends). Officials at 7 other

facilities said that vehicle access to the facilities was restricted at all times, including the indoor facility in Pennsylvania that was located in the basement of a municipal building.²² While these outdoor facilities had barriers to vehicle access via roadway, not all of the facilities were completely surrounded by fencing or some other perimeter barrier, nor do federal storage regulations require them to have such a barrier or fencing.

Table 2: Types of Physical Security in Place at the 18 Explosives Storage Facilities We Visited

Type of physical security	Number of storage facilities	Examples of physical security
Exterior barrier around storage facility		
• Vehicle access restricted	12	Fence gates with electronic or manual locks
• All access restricted	1	Interior storage in basement of municipal building
• No exterior barrier	5	
Extent of access control		
• Constant	7	24 hours, 7 days a week
• Certain periods only	5	Nights and weekends, or nights only
• No access control	5	Accessible at all times by vehicle
• Extent could not be verified	1 ^a	
Interior barrier around storage magazine		
• Pedestrian access restricted	6	Chain-link fences with locked gates
• All access restricted	1	Multiple interior door locks
• No interior barrier	11	
Extent of personnel presence		
• Regular patrols or inspections	18	Bomb squad officers and police officers
• 24-hour on-site	9 ^a	City or county employees

Source: GAO observation and comments of state and local government officials.

^aAt 1 facility, we were unable to determine the extent of access control or whether a 24-hour personnel presence existed.

²² At 1 other storage facility in Pennsylvania, we also observed a vehicle barrier in place. However, local officials at this facility did not provide information about whether or not the barrier was in place at all times.

Also, as shown in table 2, 6 of 18 storage facilities had an interior barrier immediately surrounding their storage magazines to prevent direct access by persons on foot. At each of these 6 facilities, the barriers consisted of a chain-link fence with a locked gate barring entry by unauthorized personnel (figure 4 reflects one of these facilities). At 1 other facility (the indoor facility in Pennsylvania), the storage magazines were in the basement of the municipal building, and multiple locked doors were used to prevent access by unauthorized personnel. Conversely, at 1 facility in Texas, the storage magazine could be reached on foot or by vehicle at any time because it did not have fencing or vehicle barriers to deter unauthorized access.

Figure 4: Pennsylvania Storage Facility with Interior Barrier Surrounding Type 2 Storage Magazines



Source: GAO.

Officials at all of the 18 storage facilities detailed in table 2 told us that official personnel patrolled or inspected the storage facility on a regular basis. For example, bomb squad officers said they regularly visited the facilities to check on their condition, in addition to visiting the facilities to retrieve or place explosive materials in them. In addition to bomb squad personnel, officials at 14 of the 18 facilities said that police officers from local police departments patrolled the facilities to check for any obvious signs of problems such as forced entry. However, these police patrols

typically did not include actual entry into the storage magazines to inspect the explosives themselves.

As further shown in table 2, officials at 9 of the 18 storage facilities we visited said that state or local government employees maintained a 24-hour presence at the facilities. Four of these storage facilities were located on the grounds of police training centers, where either trainees or facility personnel were present at all times. Two storage facilities—one each in Tennessee and Texas—were on the grounds of jail facilities where local correctional personnel worked 24 hours a day, 7 days a week. Two other storage facilities were located on the grounds of city/county water or sewage treatment plants, and 1 storage facility was located in the basement of a municipal building. One additional facility in Pennsylvania was located on the grounds of the police academy, but we were unable to determine whether there was 24-hour, on-site presence at that facility.

Some Explosives Storage Facilities Had Electronic Security Measures

At the 18 storage facilities we visited, we looked for the presence of a monitored alarm or video surveillance system. Although no electronic security is required under federal regulations, 4 of the 18 explosives storage facilities had either an alarm or a video monitoring system in place. Specifically, one entity in Texas had 2 facilities with monitored alarm systems in place, and two entities in Pennsylvania and Tennessee had video monitoring of their explosives storage facilities. The Texas entity had alarm systems in place at 2 of its storage facilities. At 1 facility, two small detonator magazines—while not alarmed themselves—were located inside a building protected by an alarm system. At a second facility, the door to an underground storage magazine was alarmed. Regarding the 2 facilities with video monitoring, the Tennessee facility—which was located on the grounds of a local correctional facility—took advantage of a video surveillance system already in place to monitor prisoners. The Pennsylvania facility with video monitoring was located inside a municipal building and was part of that building's overall video security system.

The remaining 14 of the 18 storage facilities did not have video or alarm systems in place at the time of our visit. Officials at 4 facilities told us they had alarm systems planned (funding not yet approved), and officials at 3 facilities said they had alarm systems pending (funding approved and awaiting installation). Officials at 2 facilities also told us they planned to install video monitoring. For example, 1 facility in Pennsylvania had its video monitoring system destroyed by lightning and was planning to

replace it. However, the local government authority had yet to approve funding for the replacement.

Several officials commented on the feasibility of installing alarm or video monitoring systems at explosives storage facilities. At 4 of the state and local entities we visited, officials noted that these storage facilities are often located in remote areas without easy access to sources of electricity. The officials added that this lack of necessary electrical infrastructure could be a cost-prohibitive barrier if they were required to install some form of electronic monitoring at explosives storage facilities. Regarding the possibility of new storage regulations that would require an electronic security system at explosives storage magazines, officials at 9 state and local entities told us they would not object to such a requirement as long as it did not create an undue financial burden.

Inventory and Other Oversight Activities Varied at Explosives Storage Facilities

At the 14 state and local entities we visited, we looked for the presence of internal inventory procedures, internal or external inspections, and licensing of the storage facility by state or local government agencies . Under federal regulations, only explosives licensees are required to perform periodic inventories and are subject to periodic ATF regulatory inspections of their storage facilities; other persons who store explosives are not. As shown in table 3, officials at all 14 of the entities we visited told us they performed periodic inventories of the contents of their explosives storage facilities. Typically, during these inventories, officials said they count all the explosives in the storage facility and reconcile them with inventory records maintained either manually or in a computerized database.

Table 3: Inventory and Oversight Activities at the 14 State and Local Entities Visited

Type of inventory and oversight activity	Number of state/local entities	Examples of inventory and oversight activities
Internal inventory		
• Annual	7	
• More frequent	7	Conducted monthly, bimonthly, or quarterly
External inspections		
• ATF only	6	All but one conducted voluntarily
• State or local authority only	1	Conducted by state regulatory authority
• Both ATF and state/local authority	2	Periodic by ATF, plus state/local inspection
• No external inspections	5	
License/permit		
• Required and in place	3	All issued by state regulatory authority
• Required and not in place	2	Required by state regulatory authority
• Not required and in place	1	Voluntarily obtained by local police
• Not required and not in place	8	

Source: GAO observations and comments of state and local government officials.

In addition, 9 of the 14 state and local entities said they had received inspections of their storage facilities, and ATF had conducted the inspections in all but 1 of these 9 cases. Regarding this 1 case in Pennsylvania, officials said a state government authority regularly performed these inspections. With regard to the ATF inspections, state or local operators of the selected facilities voluntarily requested these inspections in all but 1 case (as discussed further below).

Of the 9 selected state and local entities that received inspections by a regulatory authority, 6 entities told us they received them on a periodic basis, with another 3 entities having received a onetime inspection (all by ATF). A Pennsylvania entity that said it received annual inspections from ATF was unique among those we visited because it had also received a onetime inspection from a local government authority. This entity was the only one we visited to have any type of inspection, either onetime or periodic, from a local government authority. Last, a Colorado entity, another of the 5 receiving periodic inspections, said it was being inspected on a recurring basis by both ATF and a state government authority—it was the only entity we visited that fell into this category.

Also as shown in table 3, 5 of the 14 state and local entities we visited told us they were required to obtain a license from state regulatory authorities to operate their explosives storage facilities. One entity in Colorado had a license to store explosives issued by the state, and this entity had also obtained a federal explosives license issued by ATF. Officials at this location told us that the state required them to obtain the federal license before applying for its mandatory state license. Indeed, according to ATF officials, state or local government facilities may apply for a federal explosives license if it is required by their state regulatory agency. However, once such a license is issued, these state and local government facilities must then comply with all the same explosives laws and regulations that are applicable to licensed private sector facilities.

Officials at the 14 state and local entities we visited commented on the feasibility of mandatory ATF oversight of their explosives storage facility. Officials at 13 state and local entities said they did not object to the possibility of federal licensing or inspection of their explosives storage facilities. Six state and local entities also said that they already have close contacts with ATF and would not be concerned about additional ATF oversight of their storage facilities. Officials at 3 state and local entities noted that additional federal oversight was not a concern, as long as they were not held to a higher standard of security and safety than ATF requires of private industry.

Some Entities Had Experienced Explosives Thefts or Reported Losses

Two of the 14 state and local entities we visited had previously had a theft or loss of explosives from one of their storage facilities. At a storage facility in Texas, officials told us that criminals had once used a cutting torch to illegally gain entry to an explosives storage magazine. Some explosives were stolen, but the suspected thieves were later apprehended and the materials were recovered. At another storage facility in Colorado, officials said that an unauthorized individual had obtained keys to an explosives storage magazine and taken some of the material. As with the previous case, several individuals were apprehended and the materials were recovered. One of these incidents (the theft of explosives in Texas) did not appear in ATF's nationwide database of reported thefts and missing explosives.²³

²³ In addition to the two incidents described above, we also identified three other thefts at state and local entities during the course of our audit work. These other three incidents were all reported to ATF.

The law enforcement community has recently taken action to address the issue of thefts and security at law enforcement explosives storage facilities. In April 2005, the National Bomb Squad Commanders Advisory Board—which represents more than 450 accredited law enforcement bomb squads nationwide—initiated a program to increase security awareness at its members’ explosives storage facilities. In a letter to its membership, the advisory board encouraged all bomb squad commanders to increase diligence regarding explosives storage security. The advisory board also recommended that all bomb squads request a voluntary ATF inspection, ensure they maintain an accurate explosives inventory, and assess the adequacy of security measures in place at their respective explosive storage facilities to determine whether additional measures might be required—such as video monitoring, fencing, and alarms. This is a voluntary program, and it is too soon to tell what effect, if any, it will have towards enhancing the security at state and local law enforcement storage facilities and reducing the potential for thefts.

Possible Noncompliance With Regulations at Some Storage Facilities

At 4 of the 14 state and local entities we visited, we observed various storage practices that may not be in compliance with federal explosives regulations. These circumstances appeared to be related to storage safety issues, rather than storage security. For example, one explosives storage facility was located in the basement of a municipal building and utilized small type 3 temporary magazines (known as day-boxes) for permanent storage of high explosives and detonators. ATF regulations state that these magazines should be used only for temporary storage of explosives and may not be left unattended. At another storage facility, a high explosives storage magazine housed a small detonator (or “cap”) magazine in its interior, although ATF regulations generally require detonators to be kept separate from other explosive materials. Another storage facility contained several boxes of unmarked, 1970s-era plastic explosives (specifically C-4), possession of which is generally restricted under federal explosives law when the material in question does not contain a detection agent. Finally, an official at one storage facility acknowledged that because of the weight of explosives currently being stored, their storage magazine was in violation of ATF regulations concerning allowable distances from other inhabited structures.

Conclusions

The overall number of state and local government explosives storage facilities, the types of explosives being stored, and the number of storage magazines associated with these facilities are currently unknown. Further, because ATF does not oversee state and local government storage

facilities as part of the federal licensing process and ATF does not have any other statutory authority to conduct regulatory inspections of these facilities, ATF's ability to monitor the potential vulnerability of these facilities to theft or assess the extent to which these facilities are in compliance with federal explosives storage regulations is limited. Nevertheless, current federal explosives law as enacted by Congress does not provide ATF with specific authority to conduct regulatory oversight with respect to public sector facilities. And although we did observe possible noncompliance with the storage regulations at some of the state and local entities we visited, none of these circumstances appeared to make the facilities more vulnerable to theft.

According to ATF's interpretation of federal explosives laws and regulations, state and local government agencies—including law enforcement bomb squads and public universities—are required to report incidents of theft or missing explosives to ATF within 24 hours of an occurrence. However, during the course of our audit work, we identified five incidents involving theft or missing explosives at state and local government facilities, one of which had not been reported to ATF. Because this reporting requirement applies to any “person” who has knowledge of a theft from his stock and the definition of “person” does not specifically include state and local government agencies, ATF officials acknowledged that these entities may be unsure as to whether they are required to report under this requirement. On the basis of our limited site visit observations and discussions with state, local, and ATF officials, we did not identify a specific threat or vulnerability to theft among state and local government explosive storage facilities. However, if state and local government entities are unsure about whether they are required to report thefts and missing explosives, ATF's ability to monitor these incidents and take appropriate investigative action may be compromised by a potential lack of information.

Recommendations for Executive Action

To allow ATF to better monitor and respond to incidents of missing or stolen explosives, we recommend that the Attorney General direct the ATF Director to clarify the explosives incident reporting regulations to ensure that all persons and entities who store explosives, including state and local government agencies, understand their obligation to report all thefts or missing explosives to ATF within 24 hours of an occurrence.

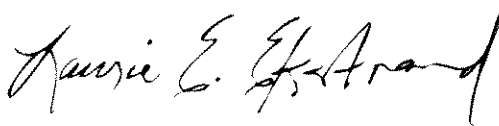
Agency Comments and Our Evaluation

On September 9, 2005, we provided a draft of this report to the Attorney General for review and comment.

On September 26, 2005, DOJ advised us that the department had no formal agency comments and further advised us that DOJ agreed with our recommendation and would take steps to implement it. ATF provided technical comments, which we have incorporated into the report, as appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of the report. At that time, we will send copies of this report to the House Committee on Government Reform; House Committee on the Judiciary; House Committee on Homeland Security; Senate Committee on the Judiciary; Senate Committee on Homeland Security and Governmental Affairs; the Attorney General; the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives; appropriate state and local government officials; and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or EkstrandL@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were William Crocker, Assistant Director; David Alexander; Amy Bernstein; Philip Caramia; Geoffrey Hamilton; and Michael Harmond.



Laurie E. Ekstrand
Director, Homeland Security
and Justice Issues

Appendix I: Scope and Methodology

In reviewing the security of state and local government explosives storage facilities, we focused on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) role in overseeing and regulating these facilities, including the extent to which ATF's licensing operations address state and local government facilities and what authority ATF has to enforce federal explosives law and regulations at state and local government facilities. In addition, we reviewed the extent to which ATF collects information about state and local government facilities, including locations and types and amount of explosives stored. To determine what states and localities are doing to ensure the safe and secure storage of explosives, we visited state and local explosives storage facilities. We also contacted other state and local government and explosives industry officials.

Interviews and Other Contacts

To obtain the perspectives of U.S. government agencies on their efforts to regulate and oversee state and local government explosives storage facilities, we met with ATF headquarters officials—specifically individuals from ATF's Office of Enforcement Programs and Services, Office of Field Operations, Office of Strategic Intelligence and Information, and Office of the Chief Counsel. We also met with or obtained information from officials with the Department of Justice's (DOJ) Office of the Inspector General, as well as the Federal Bureau of Investigation's (FBI) Bomb Data Center.

To determine what selected states and localities were doing to ensure the safe and secure storage of explosives in state and local government facilities, we met with state and local officials in Colorado, Pennsylvania, Tennessee, and Texas—specifically 13 state and local bomb squads and 1 public university. In these four states, we also contacted other state government agencies, including transportation and environmental protection agencies and fire marshals. We also contacted other public university officials in Arizona, New Mexico, and Utah.

To obtain additional perspectives of law enforcement and explosives industry experts on the safety and security of explosives storage facilities, we contacted representatives from the National Bomb Squad Commanders Advisory Board, the International Association of Bomb Technicians and Investigators, the Institute of Makers of Explosives, the International Association of Chiefs of Police, and the National Sheriffs' Association.

State and Local Site Visits

To find out what selected states and localities are doing to ensure the safe and secure storage of explosives in state and local government facilities, we visited 14 state and local government entities that stored explosives, as shown in table 4 below. During these site visits, we met with state and local officials and physically observed their explosives storage facilities and storage magazines.

Table 4: State and Local Entities Visited

State	State level		County level	City level	
	Law enforcement	Public university	Sheriff's office	Police department	Fire department
Colorado		1		1	
Pennsylvania	1			3	
Tennessee	1		1	2	
Texas				3	1
Total	2	1	1	9	1

Source: GAO.

We chose law enforcement bomb squads as the primary focus of our site visits because (1) we concluded that state and local bomb squads would be the most likely state and local government agencies to have a need for explosives storage facilities and (2) there was no other source of nationwide information on the number and location of state and local government explosives storage facilities. We selected our state and local site visits based on the following criteria:

- In selecting which states to visit, we chose those states most likely to have significant state and local government and private sector explosives activities. The state selection criteria included (1) the number of federally licensed private sector explosives companies, (2) the number of reported explosives thefts,¹ and (3) the number of law enforcement bomb squads.² Using these criteria, we then selected a geographic mix of states—specifically one state in the northeast United States, one in the southeast, one in the southwest, and one in the west.

¹ Based on explosives licensing data compiled by ATF and explosives theft incidents reported to ATF, both as of February 2005.

² Based on data about state and local law enforcement bomb squads reported by the Bureau of Justice Statistics in November 2000.

- Within each state, we selected state and local bomb squads for our site visits. These were chosen to represent a mix based on the type of agency, size of jurisdiction, and geographic location. We selected two state law enforcement agencies, one county sheriff, nine city police departments, and one city fire department. These included three jurisdictions with populations over 1 million, five with populations between 100,000 and 1 million, three with populations below 100,000, and two with statewide jurisdictions.
- We also selected one non-law enforcement explosives storage facility operated by a state university. This facility was selected as typical of the various state universities with mining-engineering programs and because it had a significant amount of explosives (over 100 pounds) in its storage facility.

During our site visits, we used a semistructured interview guide to conduct interviews with state and local officials and determine the level of security at their explosives storage facilities. Our criteria for identifying the types of security measures in place included existing federal storage laws and regulations (27 C.F.R., Part 555, Subpart K) and security guidelines issued in 2005 by the explosives industry (the Institute of Makers of Explosives). Not all of the security criteria we used are currently requirements under federal storage regulations (perimeter fencing, for example). We used these additional criteria to demonstrate the wide range of security measures actually in place at the time of our visits to these facilities. Also, while we were not conducting a compliance audit, during our site visits we observed each storage magazine and noted any instances where explosives appeared not to be stored in compliance with federal regulations.

We are not disclosing the names or other identifying information relating to the individual state and local entities we visited to ensure that security-related information is not unintentionally disclosed. Because our review was limited to a nonprobability sample of 14 state and local entities in the four states, the information discussed in this report is illustrative and cannot be generalized to all state and local government entities nationwide that store explosives.

ATF and FBI Data

ATF provided data related to explosives licensing and inspections, as well as relevant law, regulations, and procedures dealing with the storage of explosives. We also obtained data from ATF's Arson and Explosives National Repository related to incidents of theft and missing explosives

reported to ATF. FBI provided us with a nationwide list of accredited bomb squads—including number, location, and name of agency. In addition, FBI provided policies and guidance related to the bomb squad training and accreditation process.

The information we obtained from ATF (data on explosives licensees, explosives inspections, and explosives thefts) and FBI (data on the number and location of bomb squads) was used to provide background context on the number of private sector and state and local government explosives storage facilities and to assist us in selecting locations for our site visits. We interviewed agency officials knowledgeable about the data, and as a result, we determined that the data were sufficiently reliable for the purposes of this report. We also obtained data from ATF on incidents of explosive thefts and missing explosives at state and local government storage facilities. On the basis of our site visits and other audit work, we determined that these incidents may be underreported, as discussed earlier in this report.

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Attachment 3

TITLE 18 > PART I > CHAPTER 40

**CHAPTER 40 - IMPORTATION, MANUFACTURE, DISTRIBUTION
AND STORAGE OF EXPLOSIVE MATERIALS**

- Sec. 841. Definitions
- Sec. 842. Unlawful acts
- Sec. 843. Licenses and user permits
- Sec. 844. Penalties
- Sec. 845. Exceptions; relief from disabilities
- Sec. 846. Additional powers of the Secretary
- Sec. 847. Rules and regulations
- Sec. 848. Effect on State law

Sec. 841. - Definitions

As used in this chapter -

- (a) "Person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company.
- (b) "Interstate" or foreign commerce means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).
- (c) "Explosive materials" means explosives, blasting agents, and detonators.
- (d) Except for the purposes of subsections (d), (e), (f), (g), (h), (i), and (j) of section 844 of this title, "explosives" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Secretary shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, the term "explosive" is defined in subsection (j) of such section 844.
- (e) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.
- (f) "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

- (g) "Importer" means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.
- (h) "Manufacturer" means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.
- (i) "Dealer" means any person engaged in the business of distributing explosive materials at wholesale or retail.
- (j) "Permittee" means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.
- (k) "Secretary" means the Secretary of the Treasury or his delegate.
- (l) "Crime punishable by imprisonment for a term exceeding one year" shall not mean
- (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or
 - (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
- (m) "Licensee" means any importer, manufacturer, or dealer licensed under the provisions of this chapter.
- (n) "Distribute" means sell, issue, give, transfer, or otherwise dispose of.
- (o) "Convention on the Marking of Plastic Explosives" means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.
- (p) "Detection agent" means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including -
- (1) Ethylene glycol dinitrate (EGDN), C (INFERIOR 2)H (INFERIOR 4)(NO (INFERIOR 3)) (INFERIOR 2), molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;
 - (2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), C (INFERIOR 6)H (INFERIOR 12)(NO (INFERIOR 2)) (INFERIOR 2), molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;
 - (3) Para-Mononitrotoluene (p-MNT), C (INFERIOR 7)H (INFERIOR 7)NO (INFERIOR 2), molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(4) Ortho-Mononitrotoluene (o-MNT), C (INFERIOR 7)H (INFERIOR 7)NO (INFERIOR 2), molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, that has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(q) "Plastic explosive" means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10- [4] Pa at a temperature of 25 (degrees) C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.

Sec. 842. - Unlawful acts

(a) It shall be unlawful for any person -

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; and

(3) other than a licensee or permittee knowingly -

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except -

(1) a licensee;

(2) a permittee; or

(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.

(c) It shall be unlawful for any licensee to distribute explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it.

(d) It shall be unlawful for any person knowingly to distribute explosive materials to any individual who:

- (1) is under twenty-one years of age;
- (2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (3) is under indictment for a crime punishable by imprisonment for a term exceeding one year;
- (4) is a fugitive from justice;
- (5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or
- (6) has been adjudicated a mental defective.

(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution.

(f) It shall be unlawful for any licensee or permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated under section 847 of this title.

(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.

(i) It shall be unlawful for any person -

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any explosive in interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in interstate or foreign commerce.

(j) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

(k) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within twenty-four hours of discovery thereof, to the Secretary and to appropriate local authorities.

(l) It shall be unlawful for any person to manufacture any plastic explosive that does not contain a detection agent.

(m) (1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive that does not contain a detection agent.

(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

(n) (1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive that does not contain a detection agent.

(2) This subsection does not apply to -

(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by any person during the period beginning on that date and ending 3 years after that date of enactment; or

(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive that was imported or brought into, or manufactured in the United States prior to the date of enactment of this subsection by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the date of enactment of this subsection, to fail to report to the Secretary within 120 days after such date of enactment the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may prescribe by regulation.

(p) Distribution of Information Relating to Explosives, Destructive Devices, and Weapons of Mass Destruction. -

(1) Definitions. - In this subsection -

(A) the term "destructive device" has the same meaning as in section 921(a)(4);

(B) the term "explosive" has the same meaning as in section 844(j); and

(C) the term "weapon of mass destruction" has the same meaning as in section 2332a(c)(2).

(2) Prohibition. - It shall be unlawful for any person -

(A) to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, with the intent that the teaching, demonstration, or information be used for, or in furtherance of, an activity that constitutes a Federal crime of violence; or

(B) to teach or demonstrate to any person the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute to any person, by any means, information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction, knowing that such person intends to use the teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence.

Sec. 843. - Licenses and user permits

(a) An application for a user permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed \$200 for each license or permit. Each license or

permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if -

(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

(3) the applicant has in a State premises from which he conducts or intends to conduct business;

(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; and

(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

(e) (1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation is based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this section shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States court of appeals for the district

In which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to sections 701-706 of title 5, United States Code.

(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining

(1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and

(2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

Sec. 844. - Penalties

(a) Any person who -

(1) violates any of subsections (a) through (i) or (l) through (o) of section 842 shall be fined under this title, imprisoned for not more than 10 years, or both; and

(2) violates subsection (p)(2) of section 842, shall be fined under this title, imprisoned not more than 20 years, or both.

(b) Any person who violates any other provision of section 842 of this chapter shall be fined under this title or imprisoned not more than one year, or both.

(c) (1) Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the

presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that -

(A) the property has not been used or involved in a violation of law; or

(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(e) Whoever, through the use of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than 10 years or fined under this title, or both.

(f) (1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

(2) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

(3) Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.

(g) (1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to -

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Research and Special Projects Administration for the handling of hazardous materials pursuant to chapter 51 of title 49.

(h) Whoever -

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States, including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device

shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 10 years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for 20 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

(j) For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section and section 842(p), the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators,

and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title, and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

(k) A person who steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(l) A person who steals any explosive material from a licensed importer, licensed manufacturer, or licensed dealer, or from any permittee shall be fined under this title, imprisoned not more than 10 years, or both.

(m) A person who conspires to commit an offense under subsection (h) shall be imprisoned for any term of years not exceeding 20, fined under this title, or both.

(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy.

(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3)) or drug trafficking crime (as defined in section 924(c)(2)) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of an explosive material.

Sec. 845. - Exceptions; relief from disabilities

(a) Except in the case of subsections [1] (l), (m), (n), or (o) of section 842 and subsections (d), (e), (f), (g), (h), and (i) of section 844 of this title, this chapter shall not apply to:

(1) any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety;

(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

(3) the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

(4) small arms ammunition and components thereof;

(5) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921(a)(16) of title 18 of the United

States Code, or in antique devices as exempted from the term "destructive device" in section 921(a)(4) of title 18 of the United States Code; and

(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(b) A person who had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

(c) It is an affirmative defense against any proceeding involving subsections (l) through (o) of section 842 if the proponent proves by a preponderance of the evidence that the plastic explosive -

(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful -

(A) research, development, or testing of new or modified explosive materials;

(B) training in explosives detection or development or testing of explosives detection equipment; or

(C) forensic science purposes; or

(2) was plastic explosive that, within 3 years after the date of enactment of the Antiterrorism and Effective Death Penalty Act of 1996, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located.

(3) For purposes of this subsection, the term "military device" includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.

[1] So in original. Probably should be "subsection".

Sec. 846. - Additional powers of the Secretary

(a) The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency. In addition to any other investigatory authority they have with respect to violations of provisions of this chapter, the Attorney General and the Federal Bureau of Investigation, together with the Secretary, shall have authority to conduct investigations with respect to violations of subsection (d), (e), (f), (g), (h), or (i) of section 844 of this title.

(b) The Secretary is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Secretary pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Secretary by State and local authorities.

Sec. 847. - Rules and regulations

The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

Sec. 848. - Effect on State law

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.